

# **Exhibit A**

DEPOSITION OF DR. KEVIN ALMEROOTH - 7/28/2010

Page 1

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF TEXAS  
3 LUFKIN DIVISION

4 -----  
5 Personal Audio, LLC,

6 Plaintiff,

7 vs.

Case 9:09-cv-00111-RC

8 Apple Inc., Sirius XM Radio, Inc.,

9 Coby Electronics, Corp.,

10 Archos, Inc.,

11 Defendants.  
12 -----

13  
14  
15 VIDEOTAPED DEPOSITION OF  
16 DR. KEVIN ALMEROOTH

17  
18 Taken July 28, 2010

19 Commencing at 8:53 a.m.  
20  
21  
22  
23  
24

25 REPORTED BY: SHEILA D. FORD

1 P R O C E E D I N G S

2 VIDEOGRAPHER: We are on the record.

3 Here begins tape No. 1 in the deposition of  
4 Dr. Kevin Almeroth in the matter of Personal Audio  
5 versus Apple Inc., et al. Today's date is July 28,  
6 2010. The time is 8:53 a.m. The video operator is  
7 Kyle Peterson representing U.S. Legal Support.  
8 Would counsel please identify themselves and state  
9 whom they represent.

10 MR. MORTON: This is Cyrus Morton of  
11 Robins, Kaplan, Miller & Ciresi on behalf of  
12 Personal Audio.

13 MR. STEPHENS: Garland Stephens of  
14 Fish & Richardson, LLC, representing Apple Inc.

15 VIDEOGRAPHER: The court reporter  
16 today is Sheila Ford of Paradigm Reporting &  
17 Captioning. Would the reporter please swear in the  
18 witness.

19 DR. KEVIN ALMEROTH,  
20 duly sworn, was examined and testified as follows:

21 EXAMINATION

22 BY MR. STEPHENS:

23 Q. Good morning, Dr. Almeroth.

24 A. Good morning.

25 Q. Thanks for coming today. Recently you

1 conventional PC with a sound card and speakers so  
2 that it could actually reproduce audio, the only  
3 other thing you would need is software to perform  
4 the steps of Figure 3, right?

5 MR. MORTON: Objection. Form.

6 A. As long as that software did all of the  
7 things that were required by the claims, then that  
8 software, plus the PC and the hardware, should be  
9 sufficient.

10 BY MR. STEPHENS:

11 Q. Okay. And there's nothing about those  
12 things that are required by the claims that would  
13 require any additional hardware as long as you had  
14 the right software, right?

15 MR. MORTON: Objection. Form.

16 A. Well, assuming you had the right  
17 hardware --

18 BY MR. STEPHENS:

19 Q. I want to be clear. The right hardware  
20 we're talking about is a conventional laptop or  
21 desktop PC with a sound card and a speaker.

22 A. Right. So assuming that you did have all  
23 of the right hardware and that you did have all of  
24 the right software by following the instructions  
25 here, that could perform the steps of Claim 1.

1 that's described elsewhere in the patent.

2 Q. But I'm focusing on the magnetic disk  
3 memory.

4 A. Okay. I just want to make that clear.

5 Q. Understand. Conventional laptop or desktop  
6 PCs came with magnetic disk memory in 1996 when you  
7 went to a store and bought one typically, right?

8 A. Generally, yes.

9 Q. Okay. And what kind of capacity did a  
10 conventional laptop or desktop PC have in 1996?

11 A. It ranged over a fairly wide range.

12 Q. And what's that range?

13 A. Roughly speaking, it was generally on the  
14 order of megabytes. On the low end it would be hard  
15 to say with any specificity, but tens of megabytes  
16 on the low end. Generally the upper end might be at  
17 hundreds of megabytes.

18 Q. Okay. And is that appropriate for storing  
19 a plurality of songs?

20 A. Yes.

21 Q. And a person of ordinary skill in the art  
22 would have understood that in 1996?

23 A. Yes.

24 Q. Now, one of the things that -- bear with me  
25 one second here.

1 MR. MORTON: Objection. Form.

2 A. I still don't understand the question. Are  
3 you asking about 261 and how you determine that a  
4 command has been received?

5 BY MR. STEPHENS:

6 Q. I'm asking where in Figure 3 is the receipt  
7 of a command evaluated.

8 MR. MORTON: Objection. Form.

9 A. I don't understand the question. I don't  
10 understand whether you're talking about whether a  
11 command has been received or you're talking about  
12 evaluating the command.

13 BY MR. STEPHENS:

14 Q. Okay. What do you understand the patent to  
15 be referring to when it says: "As indicated at 261,  
16 the receipt of a command, which may interrupt the  
17 playback of the current selection, and the character  
18 of the command is evaluated"? I'm asking  
19 specifically about the words in that sentence, the  
20 receipt of the command is evaluated, what do you  
21 understand those to mean?

22 MR. MORTON: Objection. Form.

23 A. I think a person of ordinary skill in the  
24 art, as well as myself, would understand that to  
25 mean whether or not a properly formatted command had

1 been received. If in implementing the invention  
2 that requires a check of whether or not the command  
3 is valid up until that part, box 261 may not know  
4 what the possible set of commands are. You may just  
5 need to evaluate whether or not, you know, it's  
6 received correctly, whether or not there is actually  
7 a command that's been issued. That would happen at  
8 box 261. And then that could be implemented by any  
9 of a variety of ways as I think a person of ordinary  
10 skill in the art would understand.

11 Q. Okay. Now, I'd like to go back to the  
12 joint -- I'm sorry, we should take a break to change  
13 the tape.

14 VIDEOGRAPHER: We are going off the  
15 record. The time now is 10:54 a.m.

16 (Recess taken.)

17 VIDEOGRAPHER: We are back on the  
18 record. This marks the beginning of tape No. 2 in  
19 the deposition of Dr. Kevin Almeroth. The time now  
20 is 11 a.m.

21 BY MR. STEPHENS:

22 Q. Dr. Almeroth, going back to Almeroth  
23 Exhibit 3, which is the Joint Proposed Claim  
24 Constructions, Exhibit A for the '076 patent, I'd  
25 like to look back at the means for accepting again,

1 I've said that, you know, evaluating the character  
2 of the command, the third command, skip command,  
3 that those things identified here, provide  
4 additional detail beyond what's described as the  
5 function.

6 (Almeroth Exhibit 5 marked.)

7 BY MR. STEPHENS:

8 Q. I'm handing you what's been marked as  
9 Exhibit 5. Can you tell me what that is?

10 MR. MORTON: This is the part of the  
11 deposition that we've talked about. I'm not going  
12 to let you ask him about his reexamination  
13 declaration. So as I indicated in my e-mail  
14 yesterday, we're going to -- we're about at our half  
15 day, anyway.

16 MR. STEPHENS: Let's ask how many  
17 minutes we have on the record.

18 VIDEOGRAPHER: 19 left.

19 MR. STEPHENS: Okay. So you're  
20 basically saying I can't ask him a single question  
21 about this declaration; right, otherwise you're  
22 going to terminate the deposition?

23 MR. MORTON: That's right, as I  
24 indicated in my e-mail to you yesterday.

25 MR. STEPHENS: Okay. Yeah, I mean,



1 it's clear we didn't reach agreement. My position  
2 is I'm entitled to ask him whatever I want in this  
3 deposition and your position is that you can exclude  
4 clearly relevant testimony by just saying I can't  
5 ask questions.

6 So with that on the record we'll put  
7 this to one side. I do want to ask one other  
8 question on the record, though. Well, let me ask it  
9 differently.

10 BY MR. STEPHENS:

11 Q. Dr. Almeroth, are you available for a  
12 deposition next week? Do you have time in your  
13 schedule to accommodate it?

14 A. I would have to look at my schedule to  
15 see --

16 Q. Okay.

17 A. -- whether or not I had a block of enough  
18 time.

19 Q. Does anything come to mind that would  
20 interfere with it?

21 A. I do have a number of scheduled meetings --

22 Q. Okay.

23 A. -- that may or may not be moveable. I  
24 would have to check just to make a determination.

25 Q. Well, if we do it in Santa Barbara or

REPORTER'S CERTIFICATE

STATE OF MINNESOTA )

) ss.

COUNTY OF HENNEPIN )

I hereby certify that I reported the deposition of DR. KEVIN ALMEROTH, on the 28th day of July, 2010, in Minneapolis, Minnesota, and that the witness was by me first duly sworn to tell the whole truth;

That the testimony was transcribed by me and is a true record of the testimony of the witness;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the right to read and sign the deposition by the witness was not waived.

WITNESS MY HAND AND SEAL THIS 29th day of July, 2010.

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Sheila D. Ford

Notary Public, Hennepin County, Minnesota

My commission expires January 31, 2010